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WILLIAM J. BRENNAN

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CIVIL ACTION No. : 11-6101 (KM–MCA)

WILLIAM J. BRENNAN,  
Plaintiff,

v.

WILLIAM PATERSON UNIVERSITY;  
TOWNSHIP OF WAYNE; BRIAN GORSKI;  
SANDRA L. MILLER and John Does 1-5  
being agents, servants and employees of  
each as a continuing investigation may  
reveal and John Does 5-10 (who are  
fictitiously named because their true  
identities are unknown),  
Defendants.

SECOND AMENDED VERIFIED COMPLAINT  
AND DEMAND FOR JURY TRIAL

Plaintiff, William J. Brennan, residing in the Township of Wayne, County of Passaic, State of New Jersey, by and through his undersigned attorney Donald F. Burke, Esq., by way of a Second Amended Verified Complaint against defendants, states as follows:

### INTRODUCTION

1. This action seeks injunctive and declaratory relief as well as compensatory and punitive damages and attorney's fees for the unconstitutional customs, practices, policies, ordinances and regulations and policies of defendants Wayne Township and William Paterson University, which constitute a prior restraint on free speech.

2. In addition, plaintiff seeks relief for the unconstitutional refusal of defendants to provide plaintiff William J. Brennan with access to the Public, Educational, and Governmental cable television channels operated and controlled by defendants when they refused to air programming produced by plaintiff William J. Brennan, entitled “The New Jersey Civil Circus.”

3. This is also an as-applied and facial challenge to ‘defendants’ scheme restricting access to the two public cable television airwaves they control and operate.

4. Plaintiff seeks a determination, order and judgment from this Court declaring defendants’ regulations and actions restricting public access by plaintiff and others to Public, Educational, and Governmental cable television channels 76 and 77, which defendants operate and control, to be facially unconstitutional and unconstitutional as applied.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343, because this action arises under the First and Fourteenth Amendments to the United States Constitution.

6. This Court has jurisdiction under 28 U.S.C. § 1343(a), because this action arises under Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. This Court has supplemental jurisdiction over plaintiff’s causes of action arising under the New Jersey State law pursuant to 28 U.S.C. § 1367.

9. Venue is proper in this Court under 28 U.S.C. § 1391 because defendants reside in or do business here.

10. Venue is also proper in this Court under 28 U.S.C. § 1391 because a substantial part of the acts or omissions giving rise to plaintiff's claims occurred in this district.

### **PARTIES**

11. Plaintiff William J. Brennan is a resident of the Township of Wayne, County of Passaic and produces a television program providing political commentary. The show is titled "The New Jersey Civil Circus."

12. Defendant Wayne Township is a municipality in the County of Passaic and is the franchising authority for cable television in the township provided by the entity commonly known as Cablevision.

13. As part of the franchise agreement, Wayne Township requires Cablevision to set aside two channels for the broadcasting of Public, Educational, and Governmental programming.

14. Defendants control or are responsible for the management and operation of the two channels for the broadcasting of Public, Educational, and Governmental programming provided by Cablevision pursuant to the franchise agreement.

15. These two Public, Educational, and Governmental channels, known as channel 76 and channel 77, were created and exist for the benefit of the public and are broadcast through the Township of Wayne.

16. Defendant Wayne Township directly controls the management and operation of

Public, Educational, and Governmental channel 77.

17. Defendant William Paterson University is a State University located in Wayne Township, New Jersey.

18. Wayne Township and William Paterson University control and operate Public, Educational, and Governmental channel 76 in Wayne Township, New Jersey.

19. William Paterson University operates and controls Public, Educational, and Governmental channel 76 pursuant to an agreement with Wayne Township.

20. Defendants Sandra L. Miller and Brian Gorski are employed by William Paterson University.

21. Defendants Sandra L. Miller and Brian Gorski exercise editorial control in determining whether programming will be aired on Wayne Township's public access channel 76.

22. All of defendants' actions as set forth herein were taken under color of law and the individuals are sued in their individual and official capacities.

23. Each of the defendants performed, participated in, aided and/or abetted in some manner the acts averred in this action, proximately caused the damages averred below, and is liable to plaintiff for compensatory and punitive damages and other relief sought in this action.

24. John Does 1-10 (who are fictitiously named because their true identities are yet unknown) are agents, servants or employees of defendants whose acts are attributable to the named defendants or are other persons responsible for failing to comply with the law

as a continuing investigation may reveal.

### **BACKGROUND**

25. This is a civil rights action against employees and officials of the Wayne Township and William Paterson University for depriving plaintiff William J. Brennan of established constitutional, statutory and common law rights.

26. As noted above, Wayne Township requires Cablevision to provide two public access cable television channels for the broadcasting of Public, Educational, and Governmental programming.

27. These two public access cable television channels were created and exist for the benefit of the public, including plaintiff, who is a resident of Wayne Township.

28. One of the Public, Educational, and Governmental cable television channels is operated directly by Wayne Township.

29. The other Public, Educational, and Governmental cable television channel is operated by William Paterson University.

30. The United States Congress established Public, Educational, and Governmental Cable Television for the expressive activities of the public in order to foster freedom of expression for local citizens by providing an electronic means or “soapbox” where everyone can be a provider as well as a recipient of information free from discrimination and censorship.

31. A cable operator is prohibited from exercising any editorial control over any Public, Educational, and Governmental Cable Television channel capacity.

32. Plaintiff Brennan produces a television program entitled “The New Jersey Civil Circus” which is intended for dissemination over Public, Educational and Governmental Cable television channels.

33. Plaintiff William J. Brennan’s purpose in broadcasting “The New Jersey Civil Circus” is to present information to assist individuals and the general public in making informed decisions about topics including, but not limited to, preventing political corruption and insuring upon ethics in government.

34. In support of this purpose, William J. Brennan seeks to educate the public on issues by interviewing guests and he sometimes employs humor in doing so.

35. In his show “The New Jersey Civil Circus,” William J. Brennan engages in political speech to achieve these ends.

36. Wayne Township granted a franchise to Cablevision pursuant to state and federal law.

37. Pursuant to this franchise Cablevision was to provide two Public, Educational and Governmental cable television channels.

38. The first exclusive cable television channel is required to be dedicated to governmental and public access and the second cable television channel is required to be dedicated to educational and public access.

39. The franchise states:

**SECTION 19. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS.**

(A)The Company shall provide two (2) designated access channels; for the exclusive use of the Municipality.

The first exclusive access channel will be dedicated to governmental and public access. The second access channel will be dedicated to educational and public access. The second exclusive access channel will be provided to the Municipality within thirty (30) days of the rebuild of the cable system as set forth in Section 18 hereof.

- (B) A copy of the Company's public access rules and contract is attached to this ordinance. All programs shown on the PEG channels will conform to these rules.

40. Thus, the franchise agreement provides that one cable television channel will be dedicated to governmental and public access and the second cable television channel will be dedicated to educational and public access.

41. In establishing these cable television channels as public access channels, these channels became public forums for expressive activities where restrictions on speech must meet a strict scrutiny standard of review.

42. Defendants Sandra L. Miller and Brian Gorski are employed by William Paterson University and exercise editorial discretion in determining whether programming will be aired on Wayne Township's public access channel 77.

43. On October 1, 2010 defendant Brian Gorski, an employee of William Paterson University, advised plaintiff of William Paterson University's refusal to air "The New Jersey Civil Circus" because the show violated "general rules of conduct."

44. Specifically, Mr. Gorski advised plaintiff that use of the word "tit" in his program was unacceptable and further stated that mentioning a telephone number during the broadcast would "possibly" be considered public dissemination of private information

and “possibly” constitutes a security concern.

45. The word “tit” was used in the show as a description of unethical politicians obtaining government benefits and payments – the “public tit” – and was not used in a lewd, lascivious or obscene manner.

46. Thereafter, plaintiff William J. Brennan objected but nevertheless submitted an episode of “The New Jersey Civil Circus” to defendant Gorski on or about April 28, 2011, which did not contain the word “tits,” “tit” or any phone numbers.

47. On or about May 1, 2011, plaintiff William J. Brennan declared his candidacy for State Assembly in the 40<sup>th</sup> Legislative District.

48. Notwithstanding Brennan’s editing to comply with the content-based restrictions imposed by William Paterson University and Gorski, defendant William Paterson University again refused to air “The New Jersey Civil Circus.”

49. Defendants Miller and Gorski asserted that Wayne Township’s Ordinance § 5A-8 precluded William Paterson University from airing the show in light of Brennan’s candidacy for State Assembly in the 40<sup>th</sup> Legislative District.

50. Wayne Township’s Ordinance § 5A-8 stated:

§ 5A-8. Editorial and advocacy content policy.

A. For the purposes of this policy, a “candidate” is defined as an individual whose candidacy for any public office has been announced in the media, i.e., newspapers, radio or television.

B. Candidates as host/coproducers or guests. A host/coproducer who becomes a candidate will not be permitted to have a role in the production of the program. At that time, WTMC shall have the option to secure a



replacement host so the program can continue. The host/coproducer may suggest possible replacement hosts, but the final decision will be the responsibility of WTMC. No on-air announcement will be made regarding the departure of a host/coproducer under these circumstances.

C. Appearances on WTMC by any candidate who has filed petitions for public office shall be limited to news coverage, candidates' forums produced by nonpartisan organizations and candidates' profiles. An individual who withdraws from an election before the filing deadline is no longer considered a candidate. The candidate must submit a signed, dated statement to notify WTMC of withdrawal from candidacy.

D. Any political coverage will terminate 48 hours prior to the election.

E. Community-organization-sponsored candidates' forums. Community organizations may request to schedule candidate forums for the purpose of giving candidates the opportunity to participate in cablecast forums open to all candidates for the offices being contested. WTMC will not become involved in determining the format or content of these forums. WTMC will not be responsible for the guidelines proposed by the sponsoring organizations. The sponsoring organization(s) will be responsible for documenting to the Committee's satisfaction, if WTMC agrees to cablecast or videotape the event, that all candidates have been invited and have been given the opportunity to participate in the event on an equitable basis.

F. WTMC-sponsored candidates' profiles.

(1) WTMC finds that it is in the public interest for residents of the community to be informed about individual candidates for the offices of Mayor, Municipal Council and Board of Education elections. WTMC will provide an opportunity for profiles of candidates to be videotaped by and cablecast on WTMC as candidate profiles.

(2) The Committee will provide up to two opportunities for all candidates to be videotaped and cablecast with their own statements. The Committee recommends that a maximum taping time not to exceed seven minutes be established with cablecast and candidate order drawn by lot; recablecast, the

same and equal for all candidates, will be announced and will end not later than the Sunday preceding Election Day.

G. Advocates of candidates. No second-party advocacy for or against any candidates for public office will be permitted.

H. Advocacy on referendums, budgets and other legislative issues. Advocacy or editorial statements will be permitted only within bona fide third-party-sponsored public forums where all present have an opportunity to speak or within scheduled debates or discussions where all points of view are expected to be represented.

I. Equal time; fairness; slander and defamation.

(1) WTMC is not subject to regulations of the FCC on equal time and other considerations which provide equal access to the broadcast media. The objective is to ensure fairness in whatever is produced and/or cablecast so as not to give an advantage to one candidate over another candidate.

(2) WTMC has no affirmative responsibility to guarantee the accuracy of any statements made on live cablecasts. When it is aware that a potentially defamatory statement exists on a videotape scheduled for cablecast, it will not cablecast such a statement without advice of counsel.

(3) WTMC reserves the right to edit programs when necessary to maintain adherence to WTMC policies. WTMC will notify the host/coproducer of any changes to the content of a program prior to cablecast. There will be no editing of official meetings.

(4) The channel operated by WTMC is municipal access, not public access, and WTMC has the right and responsibility to determine who will be given or denied this access. Any person's action which would limit WTMC's right to provide municipal access cablecasting service will be deemed as grounds for denial of access for that person.

J. Editorial content. Editorials within news programs are expressly prohibited from being aired on WTMC. Endorsement of candidates is included in the definition of editorials.

51. Thus, notwithstanding the express prohibition of editorial control over any public,

educational or governmental use of channel capacity imposed by Congress through the Cable Communications Policy Act of 1984 (Cable Act), Wayne Township enacted an ordinance regulating the content of public speech in the broadcasts on the channels it operates and controls.

52. Further, Wayne Township's Ordinance § 5A-8 on its face precluded candidates for public office having a role in the production of the program.

53. Wayne Township applied this ordinance to restrict plaintiff's access to its public access cable television channel.

54. Inasmuch as plaintiff intends to become a candidate for public office in future elections, the existence of Wayne Township's Ordinance § 5A-8 acted to chill plaintiff's protected speech presently and in the future.

55. On June 2, 2011, defendant William Paterson University enforced Wayne Township's Ordinance § 5A-8 and refused to broadcast plaintiff's speech on the Public, Educational, and Governmental cable television channel it operates as authorized by Wayne Township.

56. Specifically, Sandra L. Miller, Director of Instruction & Research Technology at William Paterson University wrote to plaintiff and advised:

As you know, Channel 76 and Channel 77 were designated as "access channels" for the Township of Wayne. William Paterson University was authorized by the Township of Wayne to use one of the channels, Channel 76, for programming and, as such, we abide by the Township of Wayne's code concerning Cable TV, specifically 5A-8, which states:

“Candidates as host/coproducers or guests. A host/coproducer who becomes a candidate will not be permitted to have a role in the production of the program.”

Therefore, we regret to inform you that we cannot air your piece.

57. Subsequent to the filing of this lawsuit, the Township of Wayne acknowledged that its Ordinance § 5A-8 cannot be used to deny plaintiff Brennan access to Wayne Township’s public access television channels.

58. Specifically, pursuant to a letter dated October 27, 2011, some 10 days after this lawsuit was filed, the Township of Wayne agreed to “air the subject programming at Mr. Brennan’s request.”

59. In light of the position of the Township of Wayne that its Ordinance could not be used to prohibit the broadcasting of plaintiff’s show, William Paterson University advised that it would air an edited version of plaintiff’s show.

60. William Paterson University, however, continued in its persistence that the content of speech proposed to be aired on channel 77 “compl[y] with the University’s general rules of conduct” administered by William Paterson University’s “Cable Advisory Board.”

61. William Paterson University presented no evidence as to whether these “general rules of conduct” were in writing, whether they are published or otherwise accessible, or what standards they impose or conduct they controls.

62. Thus, plaintiff was left to guess at the standards applicable and/or being applied to his programming.

63. Subsequently, plaintiff obtained William Paterson University's Educational Access & Streaming Channel, WPTV – WPTV Operating Policies, Procedures and Guidelines.

The written policy states in pertinent part:

Section II Content Policy WPTV (Internal and External) follows the rules of Educational Programming as defined below:

William Paterson University is an educational institution and the William Paterson Television Station, "WPTV" will be operated to serve William Paterson's educational mission. The channel operated by WPTV is educational access, not public access, and WPTV has the right and responsibility to determine whether the programming on the station is consistent with its education mission. Any prospective programming that would limit WPTV's right to provide educational access cablecasting service or otherwise inconsistent with William Paterson's educational mission will be deemed as grounds for denial of access for that program.

....

f. The Cable Advisory Board reserves the right to (1) reject content, (2) alter broadcast times, (3) limit broadcast times {Typically to 2 weeks, however possibly more or less depending on content}, and/or (4) edit content for space limitations, clarity, and aesthetics, in the interest of good broadcasting practices and taste.

g. The person/entity submitting this/these bulletins agree it is understood that, I/we accept full responsibility for the content submitted for broadcasting by William Paterson University. I, individually and/or on behalf of the Organization I represent, hereby agree to indemnify and hold harmless Operator and its partners, affiliates, officers, directors, employees, and agents from and against liability, damages, and expenses (including legal fees) arising out of any all claims incurred as a result of broadcasting this. I/we acknowledge that Operator shall not be liable to me/us for any failure of Operator to broadcast this content as

scheduled, whether because of the breakdown of equipment or any other reason.

h. For editing purposes, the Cable Advisory Board reserves the right to make changes, deletions, corrections, or additions as is necessary in order to maintain reasonable standards of clarity and good taste. Content must be submitted at least (2) weeks prior to the date of your event. This allows us time to process your request.

i. As an educational access channel, WPTV neither supports or opposes the candidacy for office of any politician and does not run candidacy programming. There is no prohibition to airing programming involving politicians or political issues if those programs are of an educational nature consistent with the educational mission of William Paterson and these guidelines. 1. WPTV reserves the right to edit programs when necessary to maintain adherence to WPTV policies.

j. WPTV will notify the host/co-producer of any changes to the content of a program prior to cablecast

64. William Paterson University did not previously provide to plaintiff, despite many months of litigation, its written policies regarding access to the Public, Educational, and Governmental cable television channel operated by William Paterson University.

65. William Paterson University's "Operating Policies, Procedures and Guidelines" further acknowledges its obligation to provide through the Public, Educational, and Governmental cable television channel it operates a forum for the free exercise of speech, stating:

While federal law does not define PEG use, the legislative history suggests that PEG channels were intended to be "the video equivalent of the speaker's soapbox or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to electronic

media with the opportunity to become sources of information through this method of communication. PEG channels also contribute to an informed citizenry by bringing local schools into the home and by showing the public local government at work.

66. The written standard that proposed programming meet “good broadcasting practices and taste” gives essentially unbridled discretion to William Paterson University to reject any proposed programming.

67. William Paterson University’s written policy, therefore, constitutes a prior restraint on speech.

68. Through its treatment of plaintiff’s speech, William Paterson University failed to meet its own acknowledged obligation to provide through the Public, Educational, and Governmental cable television channel it operates as “the video equivalent of the speaker’s soapbox or the electronic parallel to the printed leaflet policies.”

69. Notwithstanding Congress having expressly prohibited through the Cable Act any editorial control over any public, educational or governmental use of channel capacity, William Paterson University has enacted a policy regulating the content of public speech in the broadcasts on the channel it operates and controls.

70. Plaintiff challenged as unconstitutional in this litigation Wayne Township’s regulations restricting access to the public access cable television channels.

71. Plaintiff’s challenge included a claim that Wayne Township’s Ordinance § 5A-8 was unconstitutional facially and as applied.

72. Subsequent to this challenge, after many months of litigation, Wayne Township

repealed this ordinance.

73. The defendants' censorship of plaintiff's program was and continues to be content based and therefore violates the U.S. Constitution and the Constitution of the State of New Jersey.

74. The actions of defendants William Paterson University and Wayne Township are so entwined the actions of each can be fairly attributed to the other.

75. Defendants individually and in concert, acting under color of law, have censored plaintiff's show because of its content and by application of § 5A-8.

**DEFENDANTS' REGULATIONS AND ACTIONS RESTRICTING PUBLIC ACCESS TO THE PUBLIC ACCESS CABLE TELEVISION CHANNELS ARE UNCONSTITUTIONAL**

76. Plaintiff repeats, reiterates and re-alleges the preceding paragraphs as if contained herein.

77. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I (1791).

78. The First Amendment applies to the states through the Fourteenth Amendment. U.S. Const. amend. XIV (1868).

79. The First Amendment prohibits censorship.

80. When government seeks to regulate speech, something so closely touching our most precious freedoms, its regulations must be precise.



81. Vague laws threaten to trap the innocent by not providing fair warning, giving reign to arbitrary and discriminatory application, and forcing citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

82. A vague law puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. This blankets with uncertainty whatever may be said. It compels the speaker to self-censor.

83. The Township of Wayne seeks to control editorial and advocacy content policy in practice and through its ordinance.

84. These content based restrictions of speech are void on their face.

85. As such, the ordinance is facially void, unconstitutionally vague and constitutes a prior restraint.

86. Plaintiff Brennan advised defendants that their conduct unconstitutionally and unlawfully infringed upon his civil rights but, nevertheless, defendants persisted and continue to persist in their unconstitutional and unlawful behavior.

87. Such obstreperous conduct is intentional, reckless and willful and wanton and warrants the imposition of punitive and exemplary damages.

**COUNT II**  
**DEFENDANTS' REGULATIONS OF BROADCASTS ON THE PUBLIC ACCESS CHANNELS ARE UNCONSTITUTIONAL BECAUSE THEY ARE NOT CONTENT NEUTRAL, ARE UNCONSTITUTIONALLY VAGUE, AND CONSTITUTE A PRIOR RESTRAINT**

88. Plaintiff repeats, reiterates and re-alleges the preceding paragraphs as if contained

herein.

89. Defendants seek to control editorial and advocacy content policy in practice and through their adopted policies. This censorship is content based and void on its face.

90. As such, the regulations are is facially void, unconstitutionally vague and constitute a prior restraints.

91. Defendants have persisted and continue to persist in their unconstitutional and unlawful behavior.

92. Such obstreperous conduct is willful and intentional and willful and wanton and warrants the imposition of punitive and exemplary damages.

**COUNT III**  
**DEFENDANTS' CENSORSHIP OF PLAINTIFF'S SPEECH BASED UPON**  
**ITS CONTENT IS UNCONSTITUTIONAL**

93. Plaintiff repeats and re-alleges the preceding paragraphs as if contained herein.

94. The actions taken by defendants, including Brian Gorski and Sandra L. Miller, on behalf of William Paterson University and Wayne Township and by other agents, servants and employees, denying plaintiff access to public access cable television channels 76 and 77 and restricting his speech as set forth above is a violation of plaintiff's rights, enshrined in the United States Constitution, the New Jersey Constitution and the Cable Act.

**COUNT VI**  
**DEFENDANTS' CENSORSHIP OF PLAINTIFF'S SPEECH VIOLATES THE**  
**NEW JERSEY CIVIL RIGHTS ACT AND THE CONSTITUTION OF THE**  
**STATE OF NEW JERSEY**

95. Plaintiff repeats and re-alleges the preceding paragraphs as if contained herein.

96. Plaintiff William J. Brennan repeats each allegation set forth above as if set forth at length herein.

97. Pursuant to the New Jersey Civil Rights Act, N.J. Stat. Ann. § 10:6-1, *et seq.*, plaintiff Brennan asserts a cause of action against defendants to redress, inter alia, violations of the New Jersey Constitution and laws of New Jersey.

98. Specifically, by denying and/or limiting plaintiff's access to public access television as described above, the defendants violated New Jersey Constitution of 1947, article I, paragraph 6, which provides:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

99. Further, defendants violated the New Jersey Constitution of 1947, article I, paragraph 18, which provides:

The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

**COUNT V**  
**DEFENDANTS CONSPIRED TO DEPRIVE PLAINTIFF OF HIS RIGHTS SECURED BY THE CONSTITUTIONS OF THE UNITED STATES AND NEW JERSEY**

100. Plaintiff incorporates the above paragraphs as though set forth in full herein.

101. The acts and practices described above lead to the conclusion that defendants conspired to deprive plaintiff of his constitutional and statutory rights.

102. Specifically, defendant William Paterson University, with the express knowledge and approval of Wayne Township, enforced Wayne Township's unconstitutional ordinance to restrict plaintiff's speech in violation of the Constitutions of the United States and New Jersey.

103. Further, defendant William Paterson University, with the express knowledge and approval of Wayne Township, applies its own facially unconstitutional regulations to restrict plaintiff's speech in violation of the Constitutions of the United States and New Jersey and the Cable Act.

104. Defendant Wayne Township has the authority and power to direct William Paterson University to cease engaging in conduct that violates the Constitutions of the United States and New Jersey.

105. Defendant Wayne Township has the authority and power to direct William Paterson University to alter, amend and/or eliminate its unconstitutional regulation of Public, Educational, and Governmental cable television channels William Paterson University operates pursuant to agreement with Wayne Township.

106. Through this agreement between William Paterson University and Wayne Township, in engaging in content based restrictions of plaintiff's speech, they have inflicted a wrong against and have injured plaintiff.

107. Defendants' actions caused harm to plaintiff including economic loss, damage to his reputation, emotional distress and other damages.

108. Defendants, acting under color of law as set forth above, deprived plaintiff of his substantive rights, privileges or immunities secured by the Constitution and laws of New Jersey.

### **PRAYER FOR RELIEF**

For the foregoing reasons, plaintiff prays for the following relief:

1. A permanent injunction:
  - a. Directing defendants to allow plaintiff Brennan immediate access to Public, Educational, and Governmental cable television channels 76 and 77 to broadcast his show "The New Jersey Civil Circus" without censorship;
  - b. Enjoining defendants from denying plaintiff Brennan access to the public access cable television channels to broadcast his show "The New Jersey Civil Circus" without censorship;
  - c. Directing William Paterson University to eliminate its unconstitutional and unlawful regulations;
2. A declaratory judgment that William Paterson University's regulations regarding access to the public access cable network are facially void and unconstitutional;
3. A declaratory judgment that the Memorandum of Understanding permitting William Paterson University to restrict access to the public access cable television channel it operates and controls separately or in conjunction with Wayne Township is void;

4. A declaratory judgment that the actions of the Township of Wayne, its agents, servants and employees and Brian Gorski and Sandra L. Miller on behalf of William Paterson University in denying plaintiff access to channels 76 and 77 are unconstitutional as applied to plaintiff's communications and are set aside;

5. A declaratory judgment that defendants may not exercise editorial control over programming to be broadcast on the public access cable television channels they operate and control;

6. A declaratory judgment that the delegation of authority from Wayne Township to William Paterson University to operate the public access channel is unlawful;

7. A permanent injunction enjoining defendants from enforcing the William Paterson University regulations as applied to plaintiff's communications and to all other entities similarly situated;

8. An award of compensatory damages;

9. An award of punitive and exemplary damages;

10. Costs and attorney's fees pursuant to 42 U.S.C. § 1988, the New Jersey Civil Rights Act and any other applicable statute or authority; and

11. Such other relief this Court in its discretion deems just and appropriate.

Respectfully submitted,  
LAW OFFICE OF DONALD F. BURKE  
Attorneys for Plaintiff  
William J. Brennan

/s/DONALD F. BURKE  
By: Donald F. Burke, Esq.

Dated: July 10, 2013

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by Jury as to the claims.

LAW OFFICE OF DONALD F. BURKE  
Attorneys for Plaintiff  
William J. Brennan

**/s/DONALD F. BURKE**

By: Donald F. Burke, Esq.

Dated: July 10, 2013

**VERIFICATION**

I, William J. Brennan, of full age do affirm and state:

1. I am the plaintiff in the above action.

2. I have reviewed the contents of the Second Amended Verified Complaint and Demand for Trial by Jury and state they are true to the best of my knowledge and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**/s/WILLIAM J. BRENNAN**  
William J. Brennan

Dated: July 10, 2013



## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“AGREEMENT”) is entered into by and between plaintiff William J. Brennan; the New Jersey Intergovernmental Insurance Fund (“NJIIIF”) on behalf of itself and Wayne Township, its officers, agents, elected officials, volunteers, contractors, insurers and employees (the “Township”); and William Paterson University (“WPU” or “the University”), its officers, agents, elected officials, volunteers, contractors, insurers and employees including Brian Gorski and Sandra Miller (collectively, the “WPU Defendants”); (the above collectively referred to herein as the “Parties” and individually as a “Party”). WPU, the Township and NJIIF shall be referred to herein as the “Defendant Parties”.

### RECITALS

This AGREEMENT is made with reference to the following facts:

**WHEREAS**, Plaintiff filed a Verified Complaint and Order to Show Cause on or about October 17, 2011, Civil Action No.: 2:11-CV-06101 (MCA-LDW); and

**WHEREAS**, all Parties wish to settle their differences without resort to further litigation; and

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

**Recitals:** The Parties acknowledge that the “WHEREAS” clauses above are true and correct, and are incorporated herein as material parts to this AGREEMENT.

**Settlement Sum:** As consideration for entering into this AGREEMENT defendants agree to pay attorneys’ fees and costs, by check made payable to Donald F. Burke, Esq., as follows: (1) the NJIIF agrees to pay the sum of \$50,000 in full and final satisfaction of all claims and causes of action brought on behalf of Plaintiff against the Township under Docket No. 2:11-CV-06101 and (2) WPU agrees to pay the sum of \$25,000 in full and final satisfaction of all claims and causes of action brought on behalf of Plaintiff against the WPU Defendants under Docket No. 2:11-CV-06101 pursuant to the following terms:

- a) Payment shall not be made unless counsel for WPU and the NJIIF has received this Agreement signed and notarized by Plaintiff, a State of New Jersey W9 executed by Plaintiff’s Counsel, and the signed Stipulation of Dismissal provided for below. Plaintiff understands that while this Agreement makes no guarantee, payment may be made within twelve weeks after counsel for WPU receives this Agreement signed and notarized by Plaintiff, a State of

New Jersey W9 executed by Plaintiff's Counsel, and the signed Stipulation of Dismissal with Prejudice provided for below.

- b) Plaintiff shall be solely responsible for the payment of appropriate taxes on this settlement, if any, and agrees and understands that the Defendant Parties have not made any representation regarding the tax treatment of the sums paid pursuant to this agreement. In the event a claim for such taxes, and/or penalties and interest, is assessed by any taxing authority, Plaintiff agrees to and does hereby hold the Defendant Parties harmless and indemnify the Defendant Parties against any and all tax liability, interest and/or penalties as due thereon from Plaintiff.
- c) Plaintiff shall be solely responsible for the payment of any claims and/or liens past, current and/or future arising out of this settlement or that may be asserted against the proceeds of this settlement and agree that they are to be satisfied by Plaintiff, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens. In the event a claim for such payment is asserted by anyone, Plaintiff agrees to make those payments and does hereby hold the Defendant Parties harmless and indemnify the Defendant Parties against any and all liability for same.
- d) Plaintiff's counsel acknowledges that if a debt/lien is owed to the State, its agencies or departments, such debt/lien shall be deducted from the \$25,000 payment by WPU prior to its disbursement. The holders of these liens/debts include, but are not limited to: the Office of the Public Defender, the Motor Vehicle Commission, the Division of Taxation, the Division of Developmental Disabilities, the Department of Corrections, the Department of Children and Families, the Probation Division of the Administrative Office of the Courts, and the State Parole Board.

**General Release of Claims:** In exchange for, and in consideration of, the payments, benefits, and other commitments described above **each Party** hereby fully releases, acquits, and forever discharges **each other Party** and, as applicable, each of their respective predecessors, successors and assigns, parent corporations, subsidiary corporations, affiliated corporations, and the officers, directors, shareholders, partners, employees, attorneys and agents, past and present, of each of the aforesaid entities of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that the Party may now have to the date of this agreement against each other Party.

This release includes, but is not limited to, all claims Plaintiff might have under Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the New Jersey Law Against Discrimination, the Americans with Disabilities Act, the Family and Medical Leave Act, the New Jersey Family Leave Act, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, the Civil Service Act, the Handicapped, Blind, or Deaf Persons Civil Rights Laws, the Developmentally Disabled Rights Act, the Alcoholism Treatment and Rehabilitation Act, the Older Workers Benefits Protection Act, the Education Code, public works statutes, the Public Transportation Act, the Right to Know Act, the Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hour laws, unemployment compensation laws, disability benefits laws, workers compensation laws, the U.S. Constitution, the New Jersey Constitution, tort law or contract law. This Release includes all claims involving any continuing effects of actions or practices which arose prior to the date of this General Release and bars the use in any way of any past action or practice in any subsequent claim.

Plaintiff represents that there are no pending lawsuits, charges or other claims of any nature whatsoever against the Defendant Parties, the State of New Jersey, and their respective employees, agents, members, officers, trustees, predecessors, successors and assigns in any state or federal court or before any agency or other administrative body by or on behalf of the Plaintiff. Further, Plaintiff agrees not to assert any additional claims, charges or other legal proceedings against the Defendant Parties, the State of New Jersey, and their respective employees, agents, members, officers, trustees, predecessors, successors or assigns in any forum, based on any events whether known or unknown occurring prior to the date of the execution of this Settlement Agreement and General Release.

This AGREEMENT shall not apply to rights or claims that may arise after the Effective Date of this AGREEMENT.

**Dismissal with Prejudice:** Counsel for each of the parties to this agreement shall execute a Stipulation of Dismissal with Prejudice of Civil Action No. 11-6101, and file same with the New Jersey District Court upon the signing of this AGREEMENT.

**No Assignment:** The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

**Governing Law and Jurisdiction:** This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of New Jersey, including but not limited to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. Any litigation arising out of this Settlement Agreement and General Release shall be brought in a court of competent jurisdiction located in the State of New Jersey.

**Conditions:** Should any Party ever breach any provision or obligation under this AGREEMENT, the party in breach explicitly agrees to pay all damages (including, but not limited to, litigation and/or defense costs, expenses, and reasonable attorneys' fees) incurred by the other as a result of the breach. Nothing in this paragraph shall, or is intended to, limit or restrict any other rights or remedies a party may have by virtue of this AGREEMENT or otherwise.

**No Admission of Liability:** The Parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by any party of any liability or unlawful conduct of any kind or the lack thereof. All Parties acknowledge and agree that this matter is being settled by defendants solely for purposes of economic expediency.

**Statements:** Plaintiff agrees not to represent the payment of attorneys' fees as an admission the defendants are liable and understands this settlement is a compromise by all parties to avoid continued litigation. He will make no public statements to the contrary.

**Headings:** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

**Modification of Agreement:** This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. The Parties agree not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged.

**Interpretation:** The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the "drafter" of the AGREEMENT.

**Severability:** The Parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT.

**Binding Nature of Agreement:** This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors,

and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.


**Entire Agreement:** This AGREEMENT sets forth the entire AGREEMENT between the Parties hereto, and fully supersedes any prior obligation of any party to the other except as otherwise specifically provided in this AGREEMENT. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made by the other in connection with the decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.

**Selective Enforcement:** The Parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this AGREEMENT shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

**Counterparts:** This agreement may be executed in counterparts and each counterpart shall have the same force and effect as an original and shall be an effective binding agreement on the part of each of the undersigned.

**THE UNDERSIGNED FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT AND AGREE TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS EACH PARTY HAS AGAINST OTHER PARTIES.**

**ACCEPTED AND AGREED:**


By:   
William J. Brennan

4-29-2016  
Date

STATE OF NEW JERSEY)  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority on this <sup>29<sup>th</sup></sup> day of <sup>April</sup> ~~October~~ 2015, personally appeared William J. Brennan, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

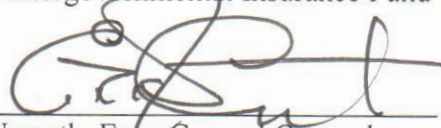
SUBSCRIBED AND SWORN TO BEFORE ME on this <sup>29<sup>th</sup></sup> day of <sup>April</sup> ~~October~~ 2015, to certify which witness my hand and seal of office.

  
NOTARY PUBLIC

\_\_\_\_\_  
(Printed Name of Notary)

My Commission Expires:  
\_\_\_\_\_


The N.J. Intergovernmental Insurance Fund

By:   
Eric. J. Nemeth, Esq., General Counsel  
N.J. Intergovernmental Insurance Fund  
55 Madison Avenue  
Suite 400  
Morristown, NJ 07960

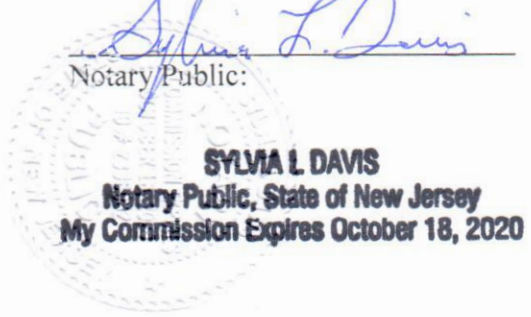
\_\_\_\_\_  
Witness

STATE OF NEW JERSEY )  
                                  ss.                                    )  
COUNTY OF \_\_\_\_\_)

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, before me, the subscriber, a Notary Public, personally appeared Eric J. Nemeth, Esq. and \_\_\_\_\_, Witness, who, I am satisfied, are the persons named in the foregoing Agreement, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

  
\_\_\_\_\_  
Notary Public:

Date: 4/29/14



By: Stephen Bolyai  
Stephen Bolyai  
Vice President for Administration and Finance  
William Paterson University

April 19, 2016  
Date

STATE OF NEW JERSEY)  
COUNTY OF PASSAIC )

BEFORE ME, the undersigned authority on this 19th day of April, 2016, personally appeared Stephen Bolyai, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed and that he or she was fully authorized to enter into this agreement by William Paterson University.

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of April, 2016, to certify which witness my hand and seal of office.

Faith A. Mutch  
NOTARY PUBLIC **FAITH A. MUTCH**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2290257**  
**My Commission Expires 7/30/2017**  
(Printed Name of Notary)

My Commission Expires:

**FAITH A. MUTCH**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2290257**  
**My Commission Expires 7/30/2017**





By:

Sandra L. Miller  
Sandra Miller

4/20/16  
Date

STATE OF NEW JERSEY)  
COUNTY OF Passaic)

BEFORE ME, the undersigned authority on this 20<sup>th</sup> day of April, 2016, personally appeared Sandra Miller, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 20<sup>th</sup> day of April, 2016, to certify which witness my hand and seal of office.

Faith A. Mutch  
NOTARY PUBLIC  
**FAITH A. MUTCH**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2290257**  
**My Commission Expires 7/30/2017**  
(Printed Name of Notary)

My Commission Expires:

**FAITH A. MUTCH**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2290257**  
**My Commission Expires 7/30/2017**



By: Brian Gorski  
Brian Gorski

4/20/16  
Date

STATE OF NEW JERSEY)  
COUNTY OF PASSAIC)

BEFORE ME, the undersigned authority on this 20th day of April, 2016, personally appeared Brian Gorski, known to me to be the person whose name is subscribed to the foregoing instrument and signed in my presence and swore upon oath this AGREEMENT was executed for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of April, 2016, to certify which witness my hand and seal of office.

Faith A. Mutch  
NOTARY PUBLIC

**FAITH A. MUTCH**  
~~NOTARY PUBLIC OF NEW JERSEY~~  
(Printed Name: **2290257** Notary)  
My Commission Expires 7/30/2017

My Commission Expires:

**FAITH A. MUTCH**  
**NOTARY PUBLIC OF NEW JERSEY**  
**I.D. # 2290257**  
**My Commission Expires 7/30/2017**

